IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.28763 of 2018
Crl.M.P.Nos.16786 & 16787 of 2018

Vijay Krishnaswami
@ Krishnaswami Vijayakumar ...Petitioner

Vs.

The Deputy Director of Income Tax,
(Investigation)
Unit – 2(3)
Nungambakkam,
Chennai – 600 034 ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records in E.O.C.C.No.242 of 2018 pending on the file of the learned Additional Chief Metropolitan Magistrate, (E.O.II), Egmore at Alli Kulam Road and quash the same.

For Petitioner : Mr.P.Ramesh Kumar

For Respondent : Mrs.M.Sheela
Special Public Prosecutor
for Income Tax

ORDER

This petition has been filed to quash the proceeding in E.O.C.C.No.242 of 2018 pending on the file of the learned Additional Chief Metropolitan Magistrate, (E.O.II), Egmore at Alli Kulam Road, Chennai, thereby taken cognizance for the offence under Section 276 C(1) of the Income Tax Act, 1961, as against the petitioner.

2. The respondent filed complaint for the offence punishable under Section 276C(1) of the Income Tax Act, for the assessment year 2017-18. The crux of the complaint is that the petitioner is an assessee. During the course of election expenditure monitoring for the State legislative assemble election of Tamilnadu, 2016, on information, a search was conducted under Section 132 of the Income Tax Act, on 24.04.2016, at the residence of the petitioner. During the course of search, they found cash of Rs.4,93,84,300/- and the same was seized from his residence. On the same day, a sworn statement was recorded on oath under Section 132(4) of the Income Tax, in which the petitioner deposed that a sum of Rs.4,93,84,300/- was his unaccounted income earned through various activities like mediating for contracts, working as

commissions agent for various transactions with government during the financial year 2016-17. He filed his return of income for the assessment year 2017-18 on 05.08.2017. But the accused failed to declare the above said income and he declared nill income for the assessment year 2017-18. Thus, the petitioner had committed the offence under Section 276C(1) of the Income Tax Act.

3. The learned counsel appearing for the petitioner submitted that the statement recorded by the respondent under Section 132(4) of the Income Tax Act, is not admissible in law, unless it is corroborated by any material evidence recorded during the search proceedings. The said sum of Rs.4,93,84,300/- which were found during the search on 24.04.2016 does not pertain to the assessment year 2017-18. Further the Principal Director of Income Tax is not the authorized officer to sanction prosecution for the offence under Section 276C(1) of the Income Tax Act. That apart, the respondent is not a competent person to lunch prosecution as against the petitioner. In support of his contention he relied upon the judgment dated ***02.11.2018,*** passed by the Hon'ble Division Bench of this Court in ***W.A.No.1125 of 2018 etc***., batch cases,

in which this Court referred the judgment of the Hon'ble Supreme Court of India reported in ***2016 (9) SCC 647*** in the case of ***Babita Lila Vs. Union of India,*** and held that the Deputy Director of Income Tax (Investigation) is incompetent to lodge a complaint.

3.1. He also submitted that the petitioner approached the Settlement Commissioner and by an order dated 26.11.2019, the Principal Commissioner of Income Tax accepted the income shown by the petitioner to the tune of Rs.6,80,77,000/- for the assessment year 2016-17. It is more than the amount which was allegedly seized from the residence of the petitioner. It was duly accepted by the Settlement Commissioner and as such, no prosecution can be initiated as against the petitioner. Further, for the assessment years 2017-18 and 2018-19, notices have been issued under Section 143(2) of the Income Tax Act and it is pending.

4. The learned Special Public Prosecutor appearing for the respondent submitted that the grounds raised by the petitioner can be considered during the trial before the trial Court, since these are mixed

question of facts and it cannot be considered by this Court that too under Section 428 of Cr.P.C. Insofar as the competency to lodge complaint is concerned, the learned Special Public Prosecutor referred the same judgment of the Hon'ble Division Bench of this Court in ***W.A.No.1125 of 2018 etc***., batch cases, dated ***02.11.2018,*** and submitted that as per Section 2(16) of the Income Tax Act, the word "Commissioner" has been defined, *inter-alia*, to include a person appointed as Principal Director of Income-tax for according sanction under Section 55 of the Black Money Act, and the same covers the Principal Director of Income Tax also. Therefore, the respondent is a competent to initiate the prosecution.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the complaint, a search was conducted on 24.04.2016 at the petitioner's residence and seized a sum of Rs.4,93,84,300/-. However the petitioner failed to disclose the income for the assessment year 2017-18. He shown his income as nill. The only contention raised by the petitioner is that the said income was not

pertaining to the assessment year 2017-18 and it was pertaining to the assessment year 2016-17. In fact, settlement application has been filed before the Settlement Commissioner and the same was duly accepted by the Settlement Commissioner. The complaint has been filed for non showing the income for the assessment year 2017-18. If the complaint has been filed for the assessment year 2016-17, then the petitioner easily would have taken a stand that the seized money was the income from the assessment year 2017-18.

7. It is also evident from the settlement application submitted by the petitioner. The complaint was filed in the month of June, 2018. Whereas the petitioner filed settlement application before the Settlement Commissioner only on 07.12.2018. Therefore, the petitioner conveniently had taken stand that the seized amount was pertaining to the income for the assessment year 2016-17. As rightly pointed out by the learned Special Public Prosecutor, even assuming that the seized money was the income for the assessment year 2016-17, it has to be proved before the trial Court during the trial. Insofar as the competency is concerned, as per Section 2(16) of the Income Tax Act, the word

"Commissioner" has been defined to include a person appointed as Principal Director of Income-tax. Therefore, the Principal Director of Income Tax is a competent to authorize the respondent to initiate prosecution.

8. In view of the above discussions, this Court finds no grounds to quash the proceeding in E.O.C.C.No.242 of 2018 pending on the file of the learned Additional Chief Metropolitan Magistrate, (E.O.II), Egmore at Alli Kulam Road, Chennai. It is made clear that the trial Court shall dispose the case on merits and in accordance with law, without influencing any of the observation made by this Court.

9. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

27.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

rts

G.K.ILANTHIRAIYAN. J,

rts

To

1. The Additional Chief Metropolitan Magistrate,
   (E.O.II),
   Egmore, Alli Kulam Road,
   Chennai.

2. The Deputy Director of Income Tax,
   (Investigation)
   Unit – 2(3)
   Nungambakkam,
   Chennai – 600 034

3. The Public Prosecutor,
   Madras High Court,
   Chennai.

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